

REMARKS
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SOLICITORS CONFERENCE
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GOOD EVENING.

I WANT TO THANK YOU FOR GIVING ME AN OPPORTUNITY TONIGHT TO BRING YOU UP TO DATE ON THE PROGRESS OF THE CRIMINAL CODE COMMISSION WHICH WE APPOINTED IN NOVEMBER OF LAST YEAR. THIS COMMISSION HAS BEGUN TO MEET REGULARLY UNDER THE DILIGENT LEADERSHIP OF ITS CHAIRMAN, FORMER REPRESENTATIVE BILLY BRITT OF SMITHFIELD. IT HAS BECOME KNOWN IN CERTAIN CIRCLES AS THE "BRITT COMMISSION." I CAN THINK OF NO BETTER COMPLIMENT TO THE COMMISSION THAN TO BE CHARACTERIZED BY THOSE VIRTUES FOR WHICH BILLY BRITT HAS BECOME WELL KNOWN THROUGHOUT THE STATE-- COURAGE, INTEGRITY AND HARD WORK.

AS MANY OF YOU KNOW, IN AUGUST OF 1969, I ASKED THE LAW AND ORDER COMMITTEE FOR FINANCING FROM FEDERAL FUNDS AVAILABLE THROUGH THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION TO CONDUCT A FEASIBILITY STUDY OR SURVEY TO GET AN INDEPENDENT OPINION AS TO THE NEED AND ADVISABILITY OF A CRIMINAL LAW REVISION PROJECT.

AND LOSS OF TIME TO THE VICTIM OF THE CRIME THAN TO THE OFFENDER HIMSELF. THESE THINGS CONCERNED ME AS I ENTERED OFFICE.

I BELIEVED THEN THAT OUR LAW NEEDED A COMPREHENSIVE AND COHESIVE REVIEW--PERHAPS A RECODIFICATION--IN AN EFFORT TO ASSURE THAT BY PATCHING UP ONE DEFECT IN OUR LAW WE DID NOT ACCIDENTALLY EXPOSE ANOTHER. THIS PATCHWORK TYPE OF REPAIR TO OUR CRIMINAL LAW HAS GONE ON FOR 30 YEARS OR MORE. THE CHARACTERIZATION OF OUR CRIMINAL LAW AS A "CRIMINAL CODE" IS A MISNOMER, A MISSTATEMENT OF FACT. WE HAVE NO CODE AS SUCH. WE HAVE INSTEAD A CONGLOMERATION OF CRIMINAL LAWS AND AMENDMENTS TO CRIMINAL LAWS WHICH WERE INTENDED TO TIE THESE ALL TOGETHER BUT FAILED IN MANY RESPECTS.

HOWEVER, I WANTED TO BE SURE THAT MY OPINIONS WERE NOT SIMPLY ILL-CONCEIVED PREJUDICES THAT I HAD PICKED UP IN THE COURTS IN WHICH I HAD TRAVELED AND PRACTICED. I WANTED SOME INDEPENDENT JUDGMENT ON THE QUESTION FROM EXPERIENCED TRIAL LAWYERS, SOLICITORS AND JUDGES AS WELL AS LAYMEN.

REALIZING THAT I WOULD BE ACCUSED OF APPOINTING A "COMMITTEE ON COMMITTEES" OR A COMMITTEE TO STUDY THE COMMITTEE, IN SEPTEMBER 1969, I APPOINTED AN AD HOC COMMITTEE OF 22 DISTINGUISHED LAWYERS AND JUDGES--RESPECTED MEN AND WOMEN IN THE FIELD

OF CRIMINAL JUSTICE--TO PROVIDE FOR ME A BRIEF AND INDEPENDENT VIEW OF THE NATURE AND SCOPE OF THE PROBLEMS IN OUR CRIMINAL LAW AND THEIR RECOMMENDATIONS AS TO HOW BEST TO RESOLVE THEM. THE AD_HOC COMMITTEE WAS GIVEN A BRIEF TERM AND RIGOROUS SCHEDULE-- APPROXIMATELY 8 MONTHS--IN WHICH TO STUDY INTENSIVELY AND REVIEW FOR ME THE PRESENT STATE OF THE CRIMINAL LAW, TO DEFINE THE SCOPE AND NATURE OF OUR PROBLEMS, AND TO MAKE RECOMMENDATIONS CONCERNING WHAT OUGHT TO BE DONE AND HOW.

WE WERE FORTUNATE TO HAVE MEN AND WOMEN OF GREAT ABILITY AND DEDICATION TO SERVE. AMONG THEM WERE FORMER SOLICITOR JUDGE DICK COOPER, FORMER CHIEF DISTRICT COURT PROSECUTOR CHARLES WINBERRY, AND FORMER SOLICITOR HENRY M. WHITESIDES. ASSISTANT ATTORNEY GENERAL SIDNEY EAGLES SERVED AS SECRETARY TO THE AD_HOC COMMITTEE AND AS DRAFTSMAN FOR ITS REPORT. THE--
COMMITTEE--~~SUBMITTED ITS~~ ^{THE} FINAL REPORT ^{was submitted} IMMEDIATELY FOLLOWING THE FINAL HEARINGS BY THE COMMITTEE HELD AT THE NORTH CAROLINA BAR ASSOCIATION MEETING LAST YEAR. THE COMMITTEE'S REPORT WAS SENT TO EACH MEMBER OF THE GENERAL ASSEMBLY.

THE RECOMMENDATIONS ARE EXTENSIVE SO I'LL NOT GO OVER ALL OF THEM TONIGHT. I THINK IT'S FAIR TO SUMMARIZE AND SAY THAT THEIR RECOMMENDATION WAS THAT THERE IS A NEED--A VERY PRESSING NEED--FOR REFORM IN BOTH THE CRIMINAL LAW AND PROCEDURE. IT WAS THE COMMITTEE'S SENTIMENT AND THEIR CONCLUSION AFTER A CLOSE VOTE THAT CRIMINAL PROCEDURE WAS MORE PRESSING AND MORE URGENT. THEY URGED THAT WORK SHOULD BEGIN IMMEDIATELY.

AS YOU MAY KNOW--"IMMEDIATELY" IN THE CONTEXT OF OBTAINING FUNDS, HIRING PEOPLE, APPOINTING COMMISSIONS, ETC., OFTEN MEANS WEEKS INSTEAD OF DAYS, NO MATTER HOW HARD WE TRY.

YOU AND YOUR COLLEAGUES IN THE COURTS SUGGESTED OVER 400 MEMBERS FOR THE COMMISSION. AFTER MUCH AGONIZING, WE SELECTED 26 MEN AND WOMEN WHO REPRESENT AS BROADLY BASED, AS REPRESENTATIVE, AND AS GEOGRAPHICALLY AND POLICITALLY WELL-DISTRIBUTED A GROUP AS POSSIBLE TO UNDERTAKE THE ACTUAL EFFORT OF CRIMINAL CODE REVISION. APPOINTMENTS WERE ANNOUNCED AFTER THE NOVEMBER ELECTIONS. BILLY BRITT, A FORMER SOLICITOR, WAS NAMED AS CHAIRMAN OF THIS COMMISSION; ALLEN BAILEY OF CHARLOTTE WAS SELECTED BY THE COMMISSION MEMBERS TO BE VICE CHAIRMAN. I HAVE DESIGNATED A MEMBER OF MY STAFF, ASSISTANT ATTORNEY GENERAL SIDNEY EAGLES, TO ACT AS SECRETARY AND AS COORDINATOR FOR THIS IMPORTANT EFFORT.

I WANT TO TALK BRIEFLY ABOUT WHAT KIND OF PROGRESS THIS GROUP HAS MADE SO FAR. THE COMMISSION IN 2-1/2 MONTHS HAS BUILT A SOLID FOUNDATION ON WHICH TO CARRY THE BURDEN OF COMPREHENSIVE OVERVIEW AND STUDY OF OUR CRIMINAL PROCEDURE. THE COMMISSION MET TWO WEEKS AFTER THEIR APPOINTMENT TO ORGANIZE AND BECOME FAMILIAR WITH THEIR TASK; THEY MET AGAIN IN JANUARY. THEY WILL MEET TWICE THIS MONTH--ONCE IN SUBCOMMITTEES AND ONCE AS A WHOLE.

AT THE OUTSET, THEY AGREED THAT CRIMINAL PROCEDURE MUST COME FIRST. THIS IS CONSISTENT WITH THE AD HOC COMMITTEE'S RECOMMENDATION AND WITH MY THOUGHTS ABOUT PRIORITIES IN CRIMINAL JUSTICE TODAY.

THE COMMISSION IS PRACTICE-ORIENTED ON PURPOSE. BUT THEY HAVE SEEN THE NEED FOR ACADEMIC CONSULTANTS AND DRAFTSMEN TO COMPLEMENT THEIR EFFECTIVENESS. ACCORDINGLY, WE HAVE RETAINED PROFESSOR LEON CORBETT OF WAKE FOREST UNIVERSITY LAW SCHOOL, A FORMER REVISOR OF STATUTES AND MEMBER OF THE ATTORNEY GENERAL'S STAFF; AND PROFESSOR WALTER DELLINGER, A NORTH CAROLINIAN FACULTY MEMBER AT DUKE UNIVERSITY'S LAW SCHOOL WHO ONCE WAS LAW CLERK TO UNITED STATES SUPREME COURT JUSTICE HUGO BLACK. JOHN SANDERS, DIRECTOR OF THE INSTITUTE OF GOVERNMENT, HAS AGREED TO FURNISH DEXTER WATTS AND DOUG GILL TO SERVE THE COMMISSION AS WELL. WITH THIS FOUR-MAN DRAFTING AND RESEARCH TEAM--CORBETT, DELLINGER, GILL AND WATTS--THE COMMISSION HAS BEGUN ITS STUDY OF OUR CRIMINAL PROCEDURE.

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THE COMMISSION'S INTERNAL ORGANIZATION IS FLEXIBLE AND "RESULTS-ORIENTED." WITHOUT SACRIFICING EACH MEMBER'S RIGHT TO COMMENT AND OFFER SUGGESTIONS TO THE OTHER TWO COMMITTEES, EACH MEMBER HAS AN ASSIGNMENT ON ONE COMMITTEE OF THE THREE.

EACH COMMITTEE HAS BEEN SUPPLIED WITH RESEARCH MATERIAL OF A BACKGROUND NATURE DESIGNED TO FAMILIARIZE THEM WITH ANY PROBLEMS IN THE NORTH CAROLINA STATUTE, ALL ALTERNATIVES TO THE STATUTE, THE LAW OF OTHER STATES AS IT PERTAINS TO THIS PARTICULAR AREA, AND THE KINDS OF PROBLEMS THAT OTHER STATES HAVE HAD, THOUGH CONSULTANTS BRING THIS INFORMATION TO THE ATTENTION OF THIS PRACTICE-ORIENTED GROUP, FULL CONTROL OF ALL POLICY DECISIONS-- THE DECISIONS AS TO PHILOSOPHY AND THE DIRECTION IN WHICH THE EFFORT WILL MOVE--RESTS SOLELY WITH THE COMMISSION MEMBERS.

THE CONSULTANTS UNDERSTAND THIS; THE MEMBERS OF MY STAFF WHO WORK WITH THEM UNDERSTAND THIS; AND THE COMMISSION UNDERSTANDS THIS. THIS UNDERSTANDING IS NECESSARY TO A COHESIVE AND WORKABLE CODE, ACCEPTABLE TO THE BAR, TO THE BENCH AND TO ENFORCEMENT IN NORTH CAROLINA--AND INCIDENTALLY, ACCEPTABLE TO THE GENERAL ASSEMBLY OF NORTH CAROLINA.

THE COMMISSION PLANS, WITH YOUR ASSISTANCE, TO HAVE THE LAW OF CRIMINAL PROCEDURE READY FOR THE GENERAL ASSEMBLY IN 1973. TO MEET THAT SCHEDULE, THE COMMISSION MEETS EVERY MONTH, USUALLY ON THE LAST FRIDAY, MEETING INTO THE EVENING WHEN NECESSARY, AND ON SATURDAY IF THE VOLUME OF WORK WARRANTS. THE STUDY COMMITTEES OF THE COMMISSION MEET IN ADDITION TO THESE TIMES. THE CONSULTANTS WORK WITH THE COMMITTEES, WITH THE COMMISSION AND WITH EACH OTHER. INDEPENDENT WORK BY COMMISSION MEMBERS AND CONSULTANTS MAKES THIS EFFORT HIGHLY PRODUCTIVE.

UPON SUBMISSION OF THE PROCEDURAL PORTION OF THE CRIMINAL CODE, THEY WILL FOCUS THEIR FULL ENERGIES ON THE SAME TYPE OF COMPREHENSIVE REVIEW AND REVISION, WHERE NECESSARY, IN OUR SUBSTANTIVE CRIMINAL LAW. SUBMISSION OF THE SUBSTANTIVE CRIMINAL LAW IS SCHEDULED FOR THE 1975 SESSION OF THE GENERAL ASSEMBLY.

IF THE COMMISSION'S EFFORTS THROUGH THESE NEXT FEW YEARS CONTINUE TO BE DILIGENT AND EFFECTIVE AS THEY HAVE BEEN SO FAR, THEY WILL MEET THIS AMBITIOUS SCHEDULE.

THE COMMISSION MEMBERS REALIZE THAT THEY WILL HAVE MANY HARD DECISIONS TO MAKE AND THAT UNANIMITY WILL BE AN EXCEPTION RATHER THAN THE RULE. THEIR CHOICES WILL NOT ALWAYS BE POPULAR WITH THE PUBLIC. THEIR IDEAS NECESSARILY MUST BE NEW IN MANY CASES.

THIS COMMISSION WILL BE INNOVATIVE AND HARD WORKING. I THINK IT IS A MISTAKE, HOWEVER, TO PREMATURELY CONCLUDE THAT THESE MEN WILL CHANGE THE LAW WHERE IT DOES NOT NEED TO BE CHANGED, OR THAT THESE MEN WILL MODIFY AND ALTER PROCEDURES IN NORTH CAROLINA WHICH DO NOT NEED TO BE MODIFIED OR ALTERED. I HAVE CONFIDENCE THAT NO MEMBER OF THIS GROUP, EACH OF WHOM IS A LEADER IN THE LIFE OF NORTH CAROLINA IN HIS OR HER OWN RIGHT, IS GOING TO BE BUFFALOED OR STAMPEDED INTO ANYTHING WHICH HE HAS NOT CAREFULLY THOUGHT THROUGH AND HAS NOT CAREFULLY EVALUATED.

TO DO THEIR JOB AS IT MUST BE DONE, THEY WILL WANT AND NEED YOUR HELP IN THE FORM OF CONSTRUCTIVE CRITICISM AND SUGGESTIONS. THEY WILL WELCOME YOUR SUGGESTIONS, AS I DO. THEY KNOW OF THE NEED FOR AS MUCH INFORMATION AND FOR THE CONCENTRATION OF AS MUCH EXPERTISE AND EXPERIENCE AS POSSIBLE INTO THIS EFFORT TO REVITALIZE THE CRIMINAL JUSTICE SYSTEM.

BEYOND THE SCOPE OF THIS PROGRESS REPORT, I WANT TO OFFER SOME SUGGESTIONS ON HOW WE CAN EASE SOME OF OUR CURRENT PROBLEMS. I WANT TO LAY TO REST ONE OR TWO QUESTIONS THAT HAVE BEEN RAISED IN CONNECTION WITH THIS CRIMINAL CODE REVISION PROJECT. I LEARNED LAST WEEK FOR THE FIRST TIME THAT THE ADVISORY BUDGET COMMISSION HAD DELETED FROM ITS RECOMMENDATIONS THE FUNDS AUTHORIZED FOR THE JUDICIAL COUNCIL. WHEN THE LEGISLATIVE RESOLUTION AUTHORIZING THE CREATION OF THE CRIMINAL CODE COMMISSION AND GIVING LEGISLATIVE ENDORSEMENT WAS INTRODUCED, SOME TRIED TO ESTABLISH A CONNECTION BETWEEN THE PASSAGE OF THE CRIMINAL CODE COMMISSION RESOLUTION AND THE DEMISE OF THE JUDICIAL COUNCIL. THE COMMISSION AND THE COUNCIL HAVE MEMBERS IN COMMON--CHARLES WINBERRY AND REPRESENTATIVE JIM RAMSEY. THE MATTER OF A COMPREHENSIVE AND COHESIVE REVIEW AND REVISION SHOULD BE AND IS A MATTER SEPARATE AND APART FROM THE REPAIR WORK AND AMENDATORY WORK WHICH THE JUDICIAL COUNCIL HAS BEEN ENGAGED IN.

IN THE PAST YEARS, THE JUDICIAL COUNCIL HAS FUNCTIONED ON A SEVERELY LIMITED BUDGET WITH INADEQUATE MANPOWER AND STAFFING.

CONSIDERING THOSE LIMITATIONS, THE COUNCIL'S CONTRIBUTIONS HAVE FAR OUTWEIGHED THEIR COST. THEIR WORK HAS BEEN RESTRICTED, HOWEVER, TO PIECEMEAL "FINGER-IN-THE-DYKE" EMERGENCY-TYPE REPAIRS TO OUR CRIMINAL LAW. THE CRIMINAL CODE COMMISSION, ON THE OTHER HAND, WILL INVOLVE ITSELF NOT WITH EMERGENCY SPOT WORK OF A REPAIR NATURE, BUT WITH A COMPREHENSIVE REVIEW AND OVERHAUL, IF NECESSARY. JUST AS THERE IS NO CONFLICT BETWEEN THE LAW AND ORDER COMMITTEE'S TASK FORCES AND THE CRIMINAL CODE COMMISSION, THERE IS NO INCONSISTENCY ABOUT THE PRESENT SIMULTANEOUS EXISTENCE OF THE JUDICIAL COUNCIL AND THE CRIMINAL CODE COMMISSION.

THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS HAS RECOMMENDED A THOROUGH OVERHAUL OF THE FEDERAL CRIMINAL LAWS. AMONG THE THINGS THEY HAVE SUGGESTED IS A BROADENING OF THE FEDERAL GOVERNMENT'S JURISDICTION SO AS TO INCLUDE CRIMES THAT HAVE TRADITIONALLY BEEN LEFT TO THE STATES TO CONTROL. WITHOUT COMMENT ON EACH OF THE FEDERAL COMMISSION'S RECOMMENDATIONS AND THE MERIT OR LACK OF MERIT OF EACH OF THEM, I THINK THAT THIS PROPOSED EXPANSION OF JURISDICTION IS A CLASSIC EXAMPLE OF A TREND THAT HAS ERODED THE POWER OF THE STATE AS A GOVERNMENTAL ENTITY.

STATE ABDICATION OF ITS PREROGATIVES--THROUGH INACTION, INEFFICIENCY AND DISINTEREST--HAS LEAD TO A GREATER FEDERAL ROLE IN MANY MATTERS WHICH I BELIEVE SHOULD PROPERLY BE LEFT TO THE STATES. IN AN ATMOSPHERE OF REFUSAL BY THE STATES TO ACT EFFECTIVELY AND RELUCTANCE ON THE PART OF THE STATES TO AGGRESSIVELY ADDRESS THEMSELVES TO THEIR PROBLEMS AND SET THEM RIGHT, FEDERAL

GOVERNMENT EXPANSIONISTS HAVE A "FIELD DAY" IN THE NATION'S PRESS AND BEFORE THE CONGRESS, POINTING OUT OUR FAILURES TO ACT AND CITING OUR LACK OF MONEY, LACK OF INTEREST AND WORST OF ALL, LACK OF RESULTS FROM STATE ACTION. THE TREND IS FAMILIAR TO ALL OF US: THE STATES DECLINE TO ACT OR REFUSE TO ADEQUATELY FINANCE NECESSARY ACTIVITY IN A GIVEN AREA. THE FEDERAL GOVERNMENT, EYING THIS ADDITIONAL JURISDICTION, BEGINS A PILOT PROJECT OR PERHAPS A NARROW INTRUSION INTO THIS PREVIOUSLY STATE-CONTROLLED AREA. ONCE THE FEDERAL FOOT IS IN THE DOOR, THE STATE HAS NO MORE CHANCE THAN THE AVERAGE HOUSEWIFE AGAINST AN ENCYCLOPEDIA SALESMAN.

WHILE THIS EXPANDED FEDERAL CRIMINAL JURISDICTION IS OFFENSIVE, UNLESS YOU AND I AND OUR LEGISLATORS SUPPORT THE EFFORTS OF THIS CRIMINAL CODE COMMISSION IN NORTH CAROLINA, WE WILL HAVE NO STANDING TO URGE THE CASE FOR STATE JURISDICTION. WE SHARE A COMMON INTEREST IN AN EFFICIENT AND EFFECTIVE CRIMINAL JUSTICE SYSTEM. ONE KEY TO THIS EFFECTIVENESS IS A COMPREHENSIVE AND COHESIVE CRIMINAL CODE IN WHICH AN INEXPERIENCED ATTORNEY CAN FIND HIS WAY, ASSURING FOR HIM AND HIS CLIENT A FAIR AND PROMPT TRIAL ON THE MERITS.

CROWDED DOCKETS ALSO DEPRIVE US OF THE EFFICIENCY WE SEEK. ONE WAY TO EASE THE COURTS' BURDEN IS TO REMOVE FROM THE CRIMINAL COURTS MANY OF THE SO-CALLED "ADMINISTRATIVE

CRIMES"--MISDEMEANORS BY VIRTUE OF FAILURE TO COMPLY WITH SOME BUILDING CODE OR A DOG AND CAT ORDINANCE OF A CITY OR COUNTY, DO THESE MATTERS HAVE A PLACE IN THE CRIMINAL COURTS? PROPERLY, THEY SHOULD BE BEFORE SOME ADMINISTRATIVE TRIBUNAL WITH THE RIGHT OF APPEAL TO A COURT WHERE SERIOUS HUMAN RIGHTS ARE INVOLVED.

ANOTHER SOURCE OF PROBLEMS IS THE SHORTAGE OF CHEMISTS AND DRUG EXPERTS PREPARED TO TESTIFY AS TO THE COMPOSITION OF CONTRABAND AT PRELIMINARY HEARINGS. OUR RESEARCH HAS SHOWN THAT IN MANY CASES, EVIDENCE OTHER THAN CHEMICAL ANALYSIS IS SUFFICIENT FOR A FINDING OF PROBABLE CAUSE.

FINALLY, I CANNOT AGREE WITH THOSE WHO SAY THAT CRIMINAL LAW AND CRIMINAL PROCEDURE IN NORTH CAROLINA IS WITHOUT NEED FOR CHANGE. NOR CAN I AGREE WITH THOSE WHO FEAR CHANGE ON THE THEORY THAT THINGS CAN ONLY GET WORSE. I BELIEVE THAT THE TIME FOR CHANGE WHERE NEEDED IS NOW--BEFORE OUR SYSTEM BECOMES COMPLETELY UNWORKABLE AND ALTOGETHER UNRESPONSIVE TO THE PEOPLE.

TO THAT END, I URGE YOU TO SUPPORT THIS COMMISSION WITH YOUR WORK, WITH YOUR SUGGESTIONS AND WITH YOUR CONSTRUCTIVE CRITICISM. ONLY WITH YOUR HELP AND WITH THE BENEFIT OF A FREE-FLOWING DIALOGUE WITH YOU, CAN THEY POSSIBLY ACCOMPLISH THE WORK WHICH THEY MUST DO.

THANK YOU.